IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.255 OF 2007

Ishwarayya Malkayya Wastrad (Swami). ..Appellant.

V/s.

Rajshekhar C. Hiremath & Ors. ..Respondents.

Ms. P.V.Badadari for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 16, 2007.

P.C. :

1. Heard counsel for the appellant.

2. I see no reason to interfere in exercise of Second Appeal. The two Courts below have examined all the relevant material on record to answer the issue of fact in favour of the respondents/plaintiffs. The argument of the appellant before this Court is that the plaintiffs made no effort to establish before the lower Court that the property in question belongs to the Math. This argument clearly overlooks that no such plea was taken before the lower Court, nor the appellant insisted for framing of issue in that behalf before the lower Court. There was no serious contest on the issue that the suit property did not or did belong to

the Math, of which the respondents/plaintiffs claims to be the Mathadhipati. In other words, the Courts below had no option, but to proceed on the assumption that the suit properties belong to the Math and were of ownership of the respondents/plaintiffs, who was the Mathadhipati of that Math. In any case, the argument now canvassed is essentially a question of fact as to whether the suit properties belong to the Math as such and not a question of law, much less, substantial question of law. Hence, dismissed.

(**A.M.KHANWILKAR,J**)